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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/696,735      | 10/25/2000  | Glynis Allicia Walton | KCC-13,406.1        | 2992             |

7590

08/26/2002

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EXAMINER

VO, HAI

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771

10

DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |               |  |
|------------------------------|-----------------|---------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)  |  |
|                              | 09/696,735      | WALTON ET AL. |  |
|                              | Examiner        | Art Unit      |  |
|                              | Hai Vo          | 1771          |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4-6</u> . | 6) <input type="checkbox"/> Other:  |

***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-14 and 33-40 in Paper No. 9 is acknowledged. Non-elected claims 15-32 and 41-61 have been cancelled in the amendment received on 07/25/2002.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-8, 12, 13 and 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack (US 5,695,868). McCormack US'868 discloses a breathable film comprising LLDPE, a filler and a bonding agent (column 5, lines 51-54). McCormack US'868 discloses the bonding agent being a styrenic block copolymer which is used as a tackifying resin as discussed in US 4,789,699 to Kieffer et al (column 6, lines 58-60) and the filler is calcium carbonate particles (column 8, line 4). McCormack US'868 discloses the film being formed by mixing LLDPE, bonding agent and filler together. The examiner interprets that the blending or compounding process of LLDPE, styrenic block copolymer and the filler calcium carbonate particles disclosed in McCormack US'868 would clearly result in the

recited blended or compounded material comprising LLDPE and styrenic block copolymer as set forth in the claims. The filler is uniformly dispersed throughout the polymer blend in order to achieve uniform breathability (column 8, lines 18-21).

Likewise, it is readily apparent that the styrenic block copolymer would form a plurality of micropores which are created from the filler calcium carbonate particles during the blending process. Table 1 of McCormack US'868 shows the amounts of LLDPE and CaCO<sub>3</sub> meeting the specific ranges required by the claims. It is the examiner's position that McCormack US'868 anticipates the claimed subject matter.

4. Claims 1-10, and 33-39 are rejected under 35 U.S.C. 102(b) as being anticipated by anticipated by WO 99/47590. WO'590 discloses a film segment **12** comprising a microporous LLDPE film having calcium carbonate particles (page 13, lines 9-10). WO'590 further discloses a bonding agent added within a segment wherein the bonding agent is a styrenic block copolymer being used in US Patent No. 5,695,868 to McCormack (page 16, lines 23-25). WO'590 discloses the unitary film having a biaxial stretching property (page 3, lines 5-7) and being stretched to at least 160% of its relaxed unbiased length (page 14, line 20). It is the examiner's position that WO'590 anticipates the claimed subject matter.
5. Claims 1-4, 6-10, 12, 33-36, 38, and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by anticipated by McCormack et al (US 6,015,764). McCormack US'764 discloses an oriented microporous film comprising an elastomeric resin and a filler (column 3, lines 1-4) wherein the elastomeric resin includes styrenic block copolymer and ethylene copolymer (column 3, lines 17-41). McCormack US'764

Art Unit: 1771

discloses the filler being calcium carbonate particles (column 5, line 59). McCormack US'764 discloses the microporous film being formed from filling the resins with the filler and stretching the film in the machine direction (column 6, lines 27-35). The film is tested for its elastic behavior in both machine direction and cross direction (table VI). Table 1 of McCormack US'764 shows the amount of filler meeting the specific range required by the claims. It is the examiner's position that McCormack US'764 anticipates the claimed subject matter.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9, 10, 38 and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCormack (US 5,695,868). McCormack US'868 is silent as to the biaxial stretching and elastic stretch properties of the film. However, since the film of McCormack US'868 is structurally the same, and made of the same materials as the presently claimed film. It is the examiner's position that the film of McCormack US'868 would inherently exhibit identical stretching properties as the film of present invention. Note In re Best 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102.

Art Unit: 1771

8. Claims 11, 14 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack (US 5,695,868). McCormack US'868 discloses a film comprising 2 % to 20 % of a bonding agent (column 3, lines 51-58). However, such a variable would have been recognized by one skilled in the art to control the degree of the stretchability and the water vapor rate transmission rate of the film such that the film stretchability increases with increasing amount of the bonding agent and the water vapor rate transmission rate of the film decreases with the increase in the bonding agent (column 13, lines 44-58). As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the bonding agent with the amount instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.
9. Claims 11-14 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/47590. WO'590 is silent as to the amount of the film components. See obviousness rational with respect to claims 11, 14 and 40 in the paragraph no. 8.
10. Claims 11, 13, 14 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack et al (US 6,015,764). McCormack US'764 is silent as to the amount of the elastomeric resin in the film. See obviousness rational with respect to claims 11, 14 and 40 in the paragraph no. 8.

**Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
August 20, 2002

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700